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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,566	02/15/2002	Brian Brockway	1155.1101101	3298
20350	7590	06/01/2006	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			NASSER, ROBERT L	
			ART UNIT	PAPER NUMBER
			3735	

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10-077-566

EXAMINER

ART UNIT PAPER

05272006

DATE MAILED:

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Commissioner for Patents

see attached

Robert L. Nasser  
Primary Examiner  
Art Unit: 3735

Newly submitted claims 1-18, 44, 48-52, 55, are 60-70 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Applicant has disclosed several methods of implanting a PTC across a heart wall, including using a trocar, a split sheath introducer, transluminal delivery to the septum and pushing across the septum, and piercing the septum with a sharpened catheter (note: a sharpened catheter is not a trocar). However, there is no disclosure of piercing the septum with a trocar for the transseptal approach. There is no disclosure of using a trocar to pierce the septum in the transseptal approach. Applicant received an action that included claims directed to transluminal and transseptal approaches. Accordingly, the claims, as amended, are inconsistent with the dependent claims to a transseptal approach. As such, applicant is deemed to have constructively elected the other delivery types besides using a trocar.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-18, 44, 48-52, 55, and 60-70 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Applicant is invited to phone the examiner to discuss the above issue.

The amendment filed on 12/1/2005 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03).

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is 571 272-4731. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert L. Nasser  
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EXAMINER